

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

VIVEK SHAH,

Petitioner,

v.

CIVIL ACTION NO. 5:15-cv-7542
(Criminal Nos. 5:12-cr-172 & 5:13-cr-127)

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM OPINION AND ORDER

On June 10, 2015, the Petitioner, acting *pro se*, filed a Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody (Documents 105-1 & 109).

By *Standing Order* (Document 118) entered on July 13, 2015, this matter was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. Subsequently, by *Order* (Document 127) entered on January 6, 2016, the case was referred to the Honorable Omar J. Aboulhosn, United States Magistrate Judge, for submission of proposed findings of fact and recommendation for disposition.

On October 19, 2016, Magistrate Judge Aboulhosn submitted a *Proposed Findings and Recommendation* (Document 144) wherein it is recommended that this Court: 1) deny the Petitioner's Application to Proceed Without Prepayment of Fees or Costs (Documents 105-8 & 116); 2) deny the Petitioner's Motion Under Section 2255 to Vacate, Set Aside, or Correct Sentence

by a Person in Federal Custody (Documents 105-1 & 109); 3) deny the Petitioner's Motions to Invalidate Plea Agreement (Documents 120 & 128); 4) deny the Petitioner's Motion for Summary Judgment (Document 122); and 5) remove this matter from the Court's docket unless the Petitioner can demonstrate, within the period of time allotted for objecting to the *Proposed Findings and Recommendation*, that the Petitioner's Motion was filed within the proper time period or that circumstances exist which would permit equitable tolling of the limitation period. Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by November 7, 2016.

Neither party has timely filed objections to the Magistrate Judge's *Proposed Findings and Recommendation*. The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*. The Court **FINDS** that the Petitioner has failed to demonstrate, within the period of time allotted for objecting to the *Proposed Findings and Recommendation*, that the Petitioner's Motion was filed within the proper time period or that circumstances exist which would permit equitable tolling of the limitation period. Additionally, the Court **ORDERS** that: 1) the Petitioner's Application to Proceed Without Prepayment of Fees or Costs (Documents 105-8 & 116) be **DENIED**; the Petitioner's Motion Under Section 2255 to Vacate, Set Aside, or Correct

Sentence by a Person in Federal Custody (Documents 105-1 & 109) be **DENIED**; the Petitioner's Motions to Invalidate Plea Agreement (Documents 120 & 128) be **DENIED**; the Petitioner's Motion for Summary Judgment (Document 122) be **DENIED**; and this matter be **REMOVED** from the Court's docket.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Aboulhosn, counsel of record, and any unrepresented party.

ENTER: November 14, 2016



IRENE C. BERGER

UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA